IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE FIFTEENTH DAY OF DECEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE L.NARASIMHA REDDY

-

WRIT PETITION NO : 23280 of 2004

Between:

The Mahabubnagar Toddy Tappers Co. Operative Society,

Mahabubnagar, rep. by its President-
G. Venkatramulu Goud, S/o. Sandanna Goud,

aged 45 Years, Bandameedipalli Village, Mahabubnagar District,

..... PETITIONER

AND

1 The Superintendent of Prohibition & Excise, Mahabubnagar District, Mahabubnagar.
2 The Deputy Commissioner of Prohibition & Excise, Mahabubnagar Division and Hyderabad Division, Hyd.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to Issue an appropriate Writ, Order or direction more particularly in the nature of writ of Mandamus declaring the action of the 1st respondent in initiating the proceedings in Cr.No.B2/3197/04 dt. 2.12.2004 issued under Sec. 31(1)(b) of A.P. Excise Act r/2 rule 11 of A.P. Excise
(Arrack and Toddy licences general conditions) rules, 1969 is illegal, arbitrary unconstitutional, without jurisdiction and violative of art. 14 of the constitution of India and consequently direct the respondent to drop all further proceedings in pursuance of the above show cause notice dt. 2.12.2004.

Counsel for the Petitioner:MR.C.B.RAM MOHAN REDDY
Counsel for the Respondents: GP FOR PROHIBITION & EXCISE

The Court at the stage of admission made the following ORDER:

The petitioner is a Toddy Tappers Co-operative Society and it held licence, which is valid up to 31-03-2007. It claims to have established 17 shops in and around Mahabubnagar Town. The first respondent issued a show cause notice dated 2-12-2004 to the petitioner directing to show cause as to why its licence shall not be suspended. The petitioner challenges the same in this writ petition.

Heard learned counsel for the petitioner and learned Government Pleader for Prohibition and Excise.

The learned counsel for the petitioner submits that the basis for issuance of the show cause notice is the alleged statement of an individual to the effect that the toddy stored at an un-authorised premises is meant for supply to the 17 shops established by the petitioner and on the face of it, such an alleged statement by a person un-connected with the petitioner cannot constitute the basis for the severe action of suspension. Another contention advanced on behalf of the petitioner is that even while issuing show cause notice, the first respondent made an observation to the effect that the allegation against the petitioner is established and that issuance of show cause notice is virtually reduced to an empty formality.

Learned Government Pleader for Prohibition and Excise, on the other hand, submits that the writ petition is not maintainable against the show cause notice. He contents that the correctness or otherwise of the allegations against the petitioner can be decided only while passing a final order, duly taking into account the explanation submitted by the petitioner.

The petitioner holds a licence, which is valid up to 31-03-2007. It was issued a show cause notice dated 02-12-2004. The basis for the show cause notice is a panchanama said to have been conducted on 19-10-2004. According to the

panchanama, the Excise officials have inspected an un-authorised toddy depot at the outskirts of Bandameedipally Village, Mahabubnagar District and during the course of inspection a person by name Narayana Goud is said to have stated that the toddy stored therein is meant for supply to the 17 shops run by the petitioner society. Samples are said to have been drawn and the tests are alleged to have revealed that the toddy was adulterated with Diazepam.

The first respondent proposed to initiate action under Section 31 of the Andhra Pradesh Excise Act for suspension of the licence. He issued the impugned show cause notice accordingly. It cannot be said that the first respondent has no jurisdiction or authority to issue the show cause notice. Interference with the show cause notice in writ petitions is very rare and almost exceptional. One of the instances where the writ petitions are maintained against the show cause notices is that when it is issued by an authority not having jurisdiction to do so or whether it is contrary to any specific provision of law. Such a situation does not exist in this case.

Learned counsel for the petitioner points out to some portion of the show cause notice and submits that the first respondent had already made up his mind and issuance of show cause notice is an empty formality. He invites the attention of this Court to the following paragraph in the show cause notice.

> "I have examined connected records. The 'A1' of the case i.e., Sri Edigolla Narayan Goud (Depot Keeper) who was present at the time of raid confessed before panchas that toddy is being brought from Mojerla and Mangilla topes and being supply to the (17) toddy shops of Group TCS Mahabubnagar. It has been established that the PTCS, Mahabubnagar is pooling the adulterated toddy at illegal depot at Bandamedipally village and supplying the same to the (17) constituent shops of Mahabubnagar group to gain illegal profits."

It is true that a reading of the said passage discloses that the first respondent has almost made up his mind. Strictly speaking, the tone and tenor of the said passage does not fit into a show cause notice. However, for the present, it has to be treated as a provisional conclusion. If the explanation offered by the petitioner is so convincing, the first respondent may change the view expressed by him in the show cause notice. It is too early, at this stage, to come to any conclusion on this aspect. The petitioner can be said to have suffered any detriment, if only the licence is suspended after consideration of the explanation.

The fear of the petitioner is that whole of its business would be brought to a stand still, once an order of suspension is passed, and number of persons depending upon it would be subjected to hardship. This fear of the petitioner can be allayed by directing that in case the first respondent passes an order suspending the licence of the petitioner, in pursuance of the impugned show cause notice, it shall not be given effect to for a period of two weeks. Such a course of action cannot be said to be abnormal for the reason that the first respondent himself has chosen to issue show cause notice one and half months subsequent to the date of inspection and panchanama.

Hence, the writ petition is disposed of directing that it shall be open to the first respondent to pass appropriate orders in pursuance of the impugned show cause notice, duly taking into account the explanation submitted by the petitioner and in case any order is passed suspending the licence of the petitioner, the same shall not be given effect to, for a period of two weeks from the date of service of the same on the petitioner. There shall be no order as to costs.

15-12-2004

kdl

To

1 The Superintendent of Prohibition & Excise, Mahabubnagar District, Mahabubnagar.
2 The Deputy Commissioner of Prohibition & Excise, Mahabubnagar Division and Hyderabad Division, Hyd.

3 Two CCs to the Government Pleader for Prohibition & Excise, A.P.High Court Buildings, Hyderabad (OUT).

4 Two CD copies.